

A CRITICAL VIEW OF THE JURY SYSTEM IN WEST MALAYSIA

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CHAPTER I

Historical background of the jury system in West Malaysia

In this chapter, it is necessary to consider^d the introduction of the system of trial by jury in West Malaysia by the British. To further understand the development of the system of trial by jury, one has to trace its history through the following events, that is, the colonisation of each state in West Malaysia.

(A) Straits Settlements

Trial by jury in West Malaysia was introduced by the British through the First Charter of Justice in 1807. The Charter was only introduced in Penang which has the distinction of being the first Malaysian state to be bestowed with the system of trial by jury. Trial by jury was then extended to Malacca and Singapore by the introduction of the Second Charter of Justice in 1826.

The First Charter of Justice of 1807 introduced English law as it then existed in England. In England at that time, the jury system was divided into two¹:

1. Devlin, P., Trial by jury, (London, 1956)

i) the grand jury, which was a jury consisted of not less than twelve jurors but not more than twenty-three, and, ii) the petit jury consisting of twelve jurors. ,
However, the grand jury in England survived only until 1933 when it was abolished by the Administration of Justice Act, 1933, section 1 (1). This is quite interesting because in the Straits Settlements² the grand jury had been abolished long before the abolition of its counterpart in England.

The grand jury was essentially a jury of enquiry whose duty was to receive complaints and accusations in criminal cases, to hear the evidence adduced on the part of the state and to find bills of indictment in cases where they were satisfied a trial ought to be held. A petit jury on the other hand was empanelled in order to try and determine any question of fact according to the law, and the evidence in court.³

The Second and Third Charters of Justice of 1826 and 1855 respectively, had provisions relating to juries identical to the First Charter of Justice. However, the Second and Third Charters of Justice empowered the court at its General and Quarter Sessions to try without a jury

2. Criminal Procedure Code, Chapter I and II

3. Black's law Dictionary

all cases other than that of treason and felony, while the First Charter had authorised the court in Penang to try the same offences without a jury only at its Quarter Sessions. So, the jurisdiction given by the First Charter of Justice of 1807 is more wider than that given by the later Charters.

In the Straits Settlements in 1873,⁴ the number of jurors was reduced to seven and since then the number of seven jurors was maintained in West Malaysia. It is important to note that in England its counterpart still consists of twelve jurors in one jury. In 1910, the jurisdiction of the jury in the High Court was made wider. The Criminal Procedure Ordinance of 1910 gave the powers to the High Court in the Straits Settlements to try all cases with jury. However, in 1976, the jurisdiction was reduced to capital cases only,⁵ excluding Emergency cases and cases under the Kidnapping Act, 1961. Through this Code, the system of trial by jury was also made uniform throughout the whole West Malaysia — the present position.

4. Criminal Procedure Ordinance, 1873

5. section 200.

(B) Federated Malay States (before 1958)

Before the intervention of British in the states of Perak, Selangor, Pahang and Negeri Sembilan, the laws and their enforcement were solely in the hands of Malay rulers who professed the Adat law, namely Adat Perpatih in Negeri Sembilan and some parts of Malacca, and Adat Temenggong professed in other states. Most of the Adat laws were unwritten. The truth of the statements made by witnesses or the accused's denial were tested by ordeals which were quite similar to those which prevailed in England before 1215, that is before the introduction of the trial by jury in England by King Henry II and Pope Innocent III.

When the British came, they introduced English law and English jury system to these states. However, it is very hard to ascertain the exact date or year as to when the system of trial by jury was first established in the Federated Malay States due to lack of materials and evidence. According to R.H. Hickling,⁶ "the practice (of trial by jury) was instituted in the Malay States in the last century with British intervention, then hastily abolished in or about 1900 when the Criminal Procedure Code was introduced, providing a trial with assessors along with Indian line...".

6. 1st. five years of the Federation of Malaya Constitution
[1962] Mal. L. R. 200